



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATOR LAW JUDGES**

Date Prepared: 4-20-79

RE: BIG BROOK LOGGING, INC., CASE NO. 79-TLC-14

THIS IS AN APPEAL BY BIG BROOK LOGGING, INC. (EMPLOYER) FROM A PARTIAL DENIAL OF TEMPORARY LABOR CERTIFICATION BY REGIONAL ADMINISTRATOR TIMOTHY M. BARNICLE, DATED APRIL 11, 1979.

EMPLOYER FILED A TEMPORARY LABOR CERTIFICATION APPLICATION FOR 20 LOGGERS, CERTIFICATION WAS GRANTED FOR ONLY LOGGERS, ON THE GROUND THAT AS A RESULT OF EMPLOYER'S RECRUITMENT EFFORTS 3 U.S. WORKERS HAD BEEN FIRED.

EMPLOYER DOES NOT CONTEST THIS FINDING. BUT IT ARGUES THAT SUBSEQUENT TO THE FILING OF ITS APPLICATION FOR 20 WORKERS ITS WORK VOLUME INCREASED. EMPLOYER FURTHER ARGUES THAT IT WOULD BE A HARDSHIP TO RELY ON U.S. WORKER; BECAUSE DURING THE PERIOD FROM JANUARY 1978 TO MARCH 31, 1979 MANY SUCH WORKERS QUIT EMPLOYMENT AFTER VARING BUT SHORT PERIODS OF WORK.

AT THE OUTSET, IT IS NOTED THAT EMPLOYER'S ARGUMENTS ARE BASED IN PART ON FACTS WHICH ARE NOT IN THE RECORD OF THE CASE, AND THEREFORE MAY NOT BE CONSIDERED. 20 C.F.R. 655.212(A). MOREOVER, SUCH FACTS WOULD NOT AFFECT THE VALIDITY OF THE REGIONAL ADMINISTRATOR'S ACTION. IF, AFTER FILING ITS APPLICATION FOR 20 WORKERS, EMPLOYER DISCOVERED A NEED FOR ADDITIONAL WORKERS, IT COULD HAVE AMENDED THE APPLICATION. 20 C.F.R. 655.201 (D). AND THE POSSIBILITY THAT THE NEW HIRES MAY QUIT EMPLOYMENT WOULD NOT JUSTIFY A FINDING THAT THEY ARE NOT AVAILABLE.

IN CONCLUSION, THE RECORD SUPPORTS THE FINDING THAT 3 U.S. WORKERS ARE AVAILABLE TO PERFORM EMPLOYER'S WORK. THEREFORE, THE REGIONAL ADMINISTRATOR'S DENIAL OF CERTIFICATION FOR 3 JOB OPPORTUNITIES WAS IN ACCORDANCE WITH 20 C.F.R. 655.206(A) AND IS HEREBY AFFIRMED.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR IN THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, IN THE EMPLOYER'S GEOGRAPHICAL AREA, PURSUANT TO 8 C.F.R. 214.2(H)(3)(i).

THIS DECISION IS BEING TRANSMITTED TO WILLIAM COTY, THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING, AND THE DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE.

NICODEMO DEGREGORIO
HEARING OFFICER

ND:tf